

**Fair Political Practices Commission
Memorandum**

To: Chairman Randolph, Commissioners Blair, Downey, Huguenin, and Remy
From: John W. Wallace, Assistant General Counsel
Subject: March 2005 Work Plan Revisions
Date: March 9, 2005

I. INTRODUCTION

Each year the Commission approves a regulatory work plan for the next calendar year.¹ The plan provides for quarterly work plan revisions. Attached is the March update to the regulatory work plan for calendar year 2005 reflecting changes during the first quarter.

II. PROPOSED REVISIONS

A. CAMPAIGN PROJECTS

Item 1. MCCAIN-FEINGOLD: Under the McCain-Feingold Act, federal law requires that 100% of the costs of a campaign mailing be paid from federal funds if the mailing supports or opposes a federal candidate. In regard to paraphernalia, such as bumper stickers, pins, and door hangings, the law requires a 36%/64% ratio - where 64% is the maximum that can be paid from state funds. The Commission will consider a regulation to simplify compliance with both the Act's reporting requirements and federal law.

***CHANGE:** The interested persons' meeting occurred in early February. Pre-notice discussion and adoption have been delayed one month.*

Item 3. Extensions of Credit: Section 85307. This regulatory project will examine whether the Commission should consider adoption of a regulation addressing extensions of credit. Staff believes it would be useful to examine whether "extensions of credit" should apply to the provision of goods and services by vendors, in order to clarify when the provisions of goods or services is an accrued expense and when it is a contribution. The staff would also like to explore whether the term should instead refer to "a line of credit."

***CHANGE:** Pre-notice discussion and adoption have been delayed one month.*

¹ See staff memorandum dated December 1, 2004, *Approval of 2005 Regulatory Priorities*.

Item 4. Sections 84203 and 84204: Consolidate late contribution and late independent expenditure reports with the 24-hour election cycle reports required under sections 85309 and 85500:

Regulation 18116 provides that whenever a filing deadline under the Act falls on a Saturday, Sunday, or official state holiday, the deadline is extended to the next business day. The regulation specifically excludes late contribution and late independent expenditure reports from this extension. SB 604 was signed by the Governor and went into effect on September 10, 2004. It amends §§ 84203 and 84204 to, in effect, consolidate the late reports with the 24-hour election cycle reports required under §§ 85309 and 85500 (added by Proposition 34). Staff proposes to amend regulation 18116 to clarify that all reports are required to be filed within 24 hours, including the late reports.

Change: *This item has been removed as a regulatory project and instead will be a legislative project for this year.*

Item 5. Regulation 18570: Return of Contributions with Insufficient Donor Information. An amendment is needed to this regulation to establish a time line and process for turning money over to the General Fund if a contribution is refunded and the contributor fails to cash the refund check.

Change: *This item was advanced two months to allow our executive fellow to participate in development and presentation of this item at both the pre-notice and adoption stage. The item will have its pre-notice hearing in April and adoption in June.*

Item 6. Disgorgement of Laundered Contributions: Section 85701 of Proposition 34 requires any candidate or committee that receives a laundered contribution, to pay the General Fund the amount of the contribution. The statute, however, is silent on the mechanism for disgorging the contribution.

Change: *This item was advanced two months to allow our executive fellow to participate in development and presentation of this item at both the pre-notice and adoption stage. The item will have its pre-notice hearing in April and adoption in June.*

B. CONFLICT-OF-INTEREST DISQUALIFICATION AND DISCLOSURE

Item 4. EXCLUDING APPOINTMENTS AND UNIQUE FINANCIAL EFFECTS FROM THE GOVERNMENTAL SALARY EXCEPTION:

In general, a decision affecting the governmental salary of an official or his or her spouse does not give rise to a conflict of interest unless the decision has a unique effect on the official or his or her spouse as described in regulation 18705.5. Enforcement proposes amending the governmental salary exception in regulation 18705.5(b) by adding the word “appoint” to the regulation, making it clear to a public official, and his or her legal advisor, that it is unlawful for a public official to appoint the official or his or her spouse to a position that is salaried, or that is unsalaried but offers monetary benefits. In addition, language should be added clarifying that it is unlawful for a public official to increase the governmental salary

of the official, or his or her spouse, when the official or his or her spouse is the only individual in the job classification or position.

***CHANGE:** In December of last year, this item was removed in light of the addition of several new items to the regulation calendar. One of the reasons the item was proposed to be removed was that it was a rare situation. However, soon after removing the item, a letter was received that raised the issue identified by the project. Therefore, the item has been restored to the calendar with a pre-notice hearing in March and adoption in May.*

Item 9. PROCEDURES FOR THE PROMULGATION AND ADOPTION OF CONFLICT OF INTEREST CODES FOR STATE AGENCIES EXEMPT FROM THE ADMINISTRATIVE PROCEDURES ACT: Section 87300 requires every agency to adopt a conflict of interest code pursuant to the provisions of the Act. Specifically, section 87300 states that “[e]very agency shall adopt and promulgate a Conflict of Interest Code” applicable to its “designated employee[s].” For the purposes of section 87300, “agency” is interpreted to mean any state agency or local government agency. (*Maas* Advice Letter, No. A-98-261.) A “state agency” is defined in the Act as “every state office, department, division, bureau, board and commission, and the Legislature.” (Section 82049.) Regulation 18750(c) sets forth the process for adopting and amending the code (other than a nonsubstantive amendment) of a state agency. In pertinent part, a state agency is required (consistent with the Administrative Procedures Act) to do the following:

“(3) Prepare a notice of intention to adopt a conflict of interest code, or to amend an existing code....

¶ . . . ¶

“(4) File a copy of the notice with the Office of Administrative Law for publication in the California Notice Register at least 60 days before the public hearing or close of the comment period.

“(5) File a copy of the notice (endorsed by the Office of Administrative Law) with the Commission at least 45 days before the public hearing or close of the written comment period.”

However, some state agencies, such as the University of California, the Legislature, and the California State University system are exempt from the requirements of the Administrative Procedures Act and therefore cannot comply with 18750(c)(4) and (5). This project will specify the process used by these agencies.

***CHANGE:** A March interested persons’ meeting was added to this item and adoption moved to May.*

C. NEW ITEM

Item 10. Proposition 71 (Stem Cell Research): As part of staff's review of Senate Bill 18 and Assembly Concurrent Resolution 1, staff noted that two sections of the new law expressly refer to the PRA. These include Health & Safety Code sections 125290.30(g) and 125290.50. Staff believes it is necessary to investigate whether Proposition 71 amended the Act indirectly, and if so, what the Commission's role is in advising on and enforcing these provisions. An interested persons' meeting will be held March 30, 2005. No specific dates for Commission meetings have been set. We are working with the new agency on timing to ensure they can fully participate in the process.

III. 1090 UPDATE

On October 7, 2004, the Commission considered a staff proposal to dedicate staff resources to the development of a pilot project to grant limited jurisdiction to the Commission over Government Code section 1090, et seq., through a three-year pilot project. The Commission directed staff to pursue the project legislatively. In addition, the Commission approved a staff project to incorporate provisions of the Public Contracts Code into the Act.

As of the date of this memorandum, the pilot project language has been introduced as Assembly Bill 1558. The Commission proposal to relocate the Public Contract Code sections into the Act did not find a place in legislation to date. More information is available in the Legislative Report.

Appendix 1: Regulation Calendar